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WORKING PAPER

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WORKING DOCUMENT

From: LV delegation
To: Working Party on Technical Harmonisation (Goods package)
Subject: LV comments (following the WP meeting on 21 January)

Compliance and enforcement regulation – comments by Latvian delegation

Art.4

Line 109 – since technical documentation is already mentioned in GA text, we can support the text.

Line 110A – As was explained by Austrian delegation during the meeting, there really is no need to duplicate the requirements already set in the Decision 768/2008 and in our opinion Line 111 was sufficient for the purposes of Art.4. However, if for the sake of compromise the text in the Line 110A needs to be kept, at least the language of the provision should be aligned with Decision 768/2008 to avoid misunderstandings.

Line 111 - we strongly prefer GA text here. As Latvia has already expressed in the last two WP meetings, we do not support and we do not understand the reasoning behind narrowing the scope of point (ba) in line 111, especially since the EP is not even asking for that. Corrective actions, as we know, can be of different nature and not all of them can be carried out only by the manufacturer or importer. Should none of the two be present in the EU as Art.4 foresees, who will bear the responsibility for corrective actions? We agreed to Art.4 as a provision ensuring that there is always a person responsible in the EU, therefore we do not understand this narrowing of the responsible persons in Line 111. Besides, cooperation should be ensured not only further to a request by an MSA. It should be ensured by default, especially where the risk is established.

Line 113A – deletion of Art.4.5a was a huge compromise for support of general approach with Art.4, therefore bringing it back into the text is a red line for Latvia, we can under no circumstances support it, irrespective of online or offline sales. GA text needs to be respected here.

Art.8

Line 130 – LV feels like few changes could still be made to the text to make it acceptable for us:

- (1) bringing back the reference to national legislation in point 1;
- (2) deletion of words “or identifying” in point 1;
- (3) deletion of reference to online sales and
- (4) deletion of point 5 regarding publishing of the agreements in ICSMS. We do not understand the reasoning behind publishing this information to other MS.

Art.9

LV cannot support the compromise text and would like to stick to the GA on Art.9. We see several problems with the text starting from the scope and ending with the lack of control from MSIs regarding the information published by the economic operators that can result in misleading consumers instead of informing them. Unless these problems are solved, we will not be able to support EP suggestions on Art.9.

Art.11

Line 151 – LV can accept the compromise text if the last sentence regarding the responsibility of SLOs in relation to the national strategies is made more flexible and respects the national arrangements regarding preparation of the strategies.

Line 154 – we do not really see the necessity for this change, but we can be flexible.

Art.12

Line 164A – we are open to seek for compromises regarding this text, however, keeping in mind the current experience of adapting the Rapex risk assessment guidelines to harmonised sphere products we cannot support the compromise text with implementing acts. We would prefer to see non-binding guidelines in this point with a “may” provision. The main reason for this is that the task is mission impossible, therefore we should not make this task or the end result of it binding for MS. The provisions should allow flexibility on MS side to use better methods if available. We do not believe that very general methodology will create any more of legal certainty that currently. It has to be kept in mind that the RAPEX guidelines are also not binding on MS.

Line 164B – after a more in-depth consideration of the text proposed in this line, LV would prefer to stay with GA. We do see a problem with setting criteria regarding the frequency of checks and amount of samples in an implementing act that will consequently be binding on MS irrespective of their market situation and priorities. The task of coordinating priorities and joint activities on specific products should be left entirely to the Network, without binding legal acts, even if the idea is only setting the criteria. This task should be left to Member states.

Art.12b

Even though the text has been made more general, it still foresees the peer reviews as obligatory tasks that have to be undertaken in respect to the each MSI in each Member State. Even if we leave the details and methodology to be decided by the Network, it does not make this task any less obligatory. For the reason of unpredictable costs and personnel resources that this task will require and unclear results of the use of the conclusions, LV cannot support compromise text for Art.12b. LV could support a voluntary peer review mechanism allowing those MS and MSIs who are willing to undertake this exercise to carry it out without an obligatory nature,

Art.13

Line 176 – LV can be flexible on the text, however, we would prefer the reference to the Network priorities to be deleted as well as the reference to online sales. Any kind of sales channel is important.

Line 177 – LV would prefer GA text.

Line 178 – LV would prefer using “such as” instead of “in particular”.

Line 179 – LV prefers GA text as it is more clear.

Line 184 – as regards to the publication of strategies, LV cannot agree to the full publication of strategies as it might influence the effectiveness of planned market surveillance activities.

Art.14

Line 187B – we agree with the idea that not all of authorities need the full set of powers. However, if this text is kept, there is still a contradiction with Line 192 that still talks about a minimum set of powers for every MSI.

Line 195 (point b) – Flexible.

Line 201 – LV can support.

Line 208 – LV strongly prefers GA. Point m) must be deleted.

Lines 209G and 209H – the corrections made are not entirely clear to us, scrutiny.

Line 209K – not clear to which point EP is referring to, but in any case this is national competence to decide how market surveillance is organised, we prefer GA.

Art.31-32

Rows 347C and 347H – It has been specifically agreed during the discussions on the GA text that it is essential to state what is the nature of decisions of the Network. Therefore, the sentence “Decisions taken by the Network shall be legally non-binding recommendations” should be kept also in the draft agreement text.

Row 345B – it was specifically agreed in the GA text to point out the supporting nature of the Commission’s role here. Therefore, the introductory part of the GA text in Row 345B should be kept as well.

Rows 347R, 347T, 347U – Latvia questions the need to change the approach on the Commission’s role as agreed in the GA and make the organisation of activities listed in these rows as the Commission’s power.

Art.35

Row 410 – LV prefers GA.

Line 411 – LV prefers GA. Directive 2001/95/EC is out of the scope of this proposal, therefore we do not see the logic to restore the deleted text on cooperation under the GPSD.

Lines 415 to 425A - LV would like to keep the text of GA in all provisions related to the pre-export controls, especially the involvement of MS in Rows 424 and 425A. Keeping the 2nd and 3rd sentence highlighted in yellow in Row 424 and the text in Row 425A is highly important.

Counterfeit goods

LV appreciates the efforts of the Presidency and the reduced amount of articles that mention counterfeit goods. However, with all due respect to EP and its determination to fight counterfeit in EU, we do still see potential problems with lines 22A and 407A.

Line 22A – LV is of the opinion that counterfeit should be kept out of this regulation. As a compromise, LV could accept text in Line 22A on the condition that the last sentence relating to the exchange of data on counterfeit between customs authorities and MSI is deleted. MSIs are not necessarily the institutions in charge of supervision of counterfeit products in the MS (in case of Latvia it is State Police). Therefore, it is not clear what purpose this information will serve and how it will improve situation with counterfeit products. It just proves once again that this regulation is not the right solution.

Line 159 - LV strongly insists on keeping counterfeit out of this provision as counterfeit goods should be illegal per se and therefore we do not understand the need to spend resources on evaluating the risks of products that can be banned on other grounds.

Line 221A – it is not clear what is the solution of Art.15 since the text is not available in this document. Scrutiny.

Line 407A – after listening to explanations of the changes made, LV cannot support the text added in line 407A. First of all, as mentioned above, we consider evaluation of risks related to counterfeit products redundant. Secondly, the customs are not in the position to identify counterfeit products, it is usually done by the producers or holders of the IPR. Thirdly, we do not see the point to ensure exchange of information on counterfeit products between customs and ICSMS as ICSMS is an information exchange system for the purpose of market surveillance institutions, which are not necessarily the institutions in charge of supervision of counterfeit products in the MS. Therefore, it is not clear what purpose this information will serve.